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VALORIZATION OF COFFEE

A DETAILED REPORT OF THE TRANSACTIONS AND FACTS RELATING TO THE VALORIZATION OF COFFEE

BY

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VALORIZATION OF COFFEE.

DEPARTMENT OF JUSTICE,
Washington, September 6, 1911.

Hon. J. A. FOWLER,
Assistant to the Attorney General.

SIR: On July 11, 1911, I submitted a report on coffee valorization. Further consideration has only strengthened the conclusions therein reached. As indicated by you to me personally, I submit herewith a somewhat more detailed report of the transactions and facts.

The world now consumes a million and a half bags of coffee, of 60 kilos each, per month, or 198,000,000 pounds of coffee per month, or 18,000,000 bags, with a total of over two and one-third billion pounds of coffee per year. Of this, the United States consumes 40 per cent of the entire amount, or about 80,000,000 pounds per month, or 950,000,000 pounds per year. Therefore each cent of rise in the price of coffee maintained throughout a year means over nine and one-half million dollars tax on the people of the United States. A 6-cent rise in the price of coffee means $57,000,000 per year, or about 60 cents for every man, woman, and child in the United States. During valorization the price of coffee has more than doubled, and the rise exceeds 6 cents.

For the coffee year from July 1, 1910, to June 30, 1911, the world's crop of coffee for the first time fell far below the world's consumption. It was fourteen and one-half million bags, or a shortage of three and one-half million bags on the world's consumption for the year. Of the world's coffee the Republic of Brazil produces from 80 to 85 per cent, and of the Brazilian coffee the great bulk is produced in the two large States of Sao Paulo and Rio.

It will appear clearly, therefore, that anything which affects coffee in Brazil must immediately be felt in the United States, which consumes 40 per cent of all the world's coffee and which buys and consumes from 80 to 85 per cent of the Brazilian coffee. In 1906–7 the world's crop of coffee was unusually large, being estimated at about 22,000,000 bags. The Minister of Finance of the State of Sao Paulo, Olavo Egydio de Sousa Aranha, conceived or stood sponsor for a plan as to coffee something like the once proposed populistic plan of making wheat the standard of value. This coffee plan has become known as the "Valorization of coffee," and the State reports, published at length on it, are spoken of as "Transactions in the defense of coffee."

"Valorization," as defined in the consular reports of our consul, means to give, by law, a fictitious or artificial value above or apart from the normal or ordinary market value. That the sole intent of the valorization plan from its conception and inception was to artificially enhance the price of the staple, coffee, above its natural

or market price, there is now no longer any room for doubt, and I do not see that there ever should have been any real question on that score. What other object can either excuse or explain the attempt, let alone justify it?

That the desired objects have been attained pari passu with the dreams of their originators is also now apparent. However, there are still some who profess to think that natural causes and not valorization are responsible for the recent rise and doubling in the price of coffee.

On the questions both of the intention and result of the valorization plan, as a plan to raise the price of coffee, let us overlook for a moment Minister Egydio's naive disclaimer of any further interest on the part of his Government in the plan, as set forth in his cable of April 1, 1909, referred to later on in this report, and quote from his last official report relating to valorization, made to his Government under date of September 30, 1910, in which he says:

> There is no foundation whatsoever to the suggestion which has sometimes been made that the benefits which followed the Government's (in valorization) action were due simply to natural causes and were not iu any way influenaed by such action.
>
> What happened was just the contrary, as may be verified by examining the following table, showing the figures for the crops of four years preceding and of four years succeeding the Government's intervention.

Then follow the tables and statements that show that, despite larger average crops and greater than anticipated following the intervention, the market price has steadily risen. It seems that the planters were able to increase their yield without increase in area more than had been anticipated, for a term of years at least. But be that as it may, the potent resulting and conclusive fact remains as he states it, that in spite of the fact of such increase in quantity, the partial corner, maintained by the State for itself, its committee members, and financiers, did unnaturally enhance the price just as set out.

Let the editor of the Brazilian Review, who was against the plan to begin with, from economic reasons, as a Brazilian, offer his testimony as to the object and result of the plan from the South American standpoint.

> The action of the Sao Paulo Government in promoting valorization has been condemned because it succeeded, against all expectations, in putting up prices and so, incidentally, raising the cost of coffee to consumers.
>
> Surprising as it may seem, this was indeed the very end and aim of its existence.

Here again is good testimony of what the aim and result was and is.

The law and declared policy in the United States is that value shall be the result only of natural market conditions of supply and demand and competition, and that anything which seeks to and does fix prices artificially at a different level is frowned upon and made illegal in most States by statute, and illegal by Federal statute where such artificially fixed prices are the direct result of some restraint upon interstate commerce if produced as a result of any contract or combination or conspiracy. Likewise, section 73 of the Wilson Tariff Act of August 27, 1894, which is still in force, specifically provides:

> That every combination, conspiracy, trust, agreement, or contract is hereby declared to be contrary to public policy, illegal, and void, when the same is made by or between two or more persons or corporations either of whom is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful

trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who is or shall hereafter be engaged in the importation of goods or any commodity from any foreign country in violation of this section of this act, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and, on conviction thereof in any court of the United States such person shall be fined in a sum not less than $100 and not exceeding $5,000, and shall be further punished by imprisonment, in the discretion of the court, for a term not less than 3 months nor exceeding 12 months.

This being the law, the quotations above set out are proof, both by official report and common knowledge, of its intended and actual violation. And this Government should not sit by supinely and see its people imposed on by coffee traders, financiers, and others who are operating to help out a foreign country in direct violation of our own plain statutes.

To make effective this plan of coffee valorization it was necessary to have the aid of powerful financiers, and conditions demanded by them had to be met. As Minister Egydio puts it, in his cable of April 1, 1909, measure "created by exigency (demand) of the bankers," but which "the Government is negotiating with them to replace it by another more acceptable to the markets." This report is only interested with such financiers so far as they may be citizens of the United States.

At the beginning several agreements were entered into between the three Brazilian States of Rio, Minas Geraes, and Sao Paulo, in accordance with which edicts were published to make the agreements effective, which contained among their provisions one for the curtailment and restriction by law of further coffee planting "by a sufficiently high tax," while the three States should mutually agree. These laws are still effective, and the additional planting of coffee trees stopped in 1906. Naturally when the planting was stopped every owner of coffee trees tried to make those which he had planted and growing produce to the utmost, and they were attended to properly, with the one good result that the quality of coffee grown was probably bettered. However, when the limited production thus made possible had been reached, the increase in the production of coffee must stop. On the other hand, the world's consumption of coffee has steadily increased. Thus there would come a time—and it has already arrived—when coffee consumption annually exceeds coffee production. And when such a condition of affairs arrives and continues for a time, as it soon will, it is apparent that any man, or group of men, or financiers, who control any appreciable percentage of the world's visible supply of coffee are in a position to exact any price they desire for what they have on hand. In other words, if such have not a complete corner, they have at least such power of undue restraint over the market and coffee trade as to be able to arbitrarily control and fix the price of coffee. This exact contingency was foreseen and calculated on in the conception of the valorization plan. Whether the financiers and their coffee-trading associates took any active steps to induce the making of these restrictive laws or not, the fact remains that such laws were either in existence and known at the time or enacted subsequently by demand of the bankers, and formed a part of the scheme of security by future enhancement of price under which the loans were made and accepted and made secure to the financiers.

The loans made in the so-called defense or valorization of coffee were as follows:

(1) Treasury notes of the State of Sao Paulo for £1,000,000, drawn August 7, 1906, for one year, and yielding net £919,000.

(2) The first loan proper of £3,000,000, made jointly to the State of Sao Paulo by J. Henry Schroeder & Co., London, and the National City Bank, of New York, in the preliminary arrangements for which the National City Bank was represented by Mr. Herman Sielcken, as its authorized and accredited agent in London, the provisional contract for which was made December 8, 1906, the definitive contract made or signed December 14, 1906, and the contract of ratification signed February 14, 1907, for four years, on or before.

(3) The load of £3,000,000 made by the Federal Government of Brazil, under contract with N. M. Rothschild & Sons, through the agency of Eugene J. J. Hollender, jr., January 28, 1908.

(4) The final loan, completing the so-called valorization, in the sum of £15,000,000, made by the combined bankers to the State of Sao Paulo, and guaranteed by the Federal Government of Brazil, to run 10 years to January 1, 1919, and to be used, as stated in article 3 of the law and decree announcing it, under date of August 25, 1908, "For the completion of the measures necessary for the defense of coffee, and for the conversion into a consolidated debt of the various temporary operations undertaken with the same object in view."

Inasmuch as the treasury or exchequer bills issued and the £3,000,000 Schroeder-City National Bank loan were both paid out of subsequent loans, so that as to that £4,000,000 they were renewals, it is therefore fair to say that the gross amount of funds at any time available under the various loans was not exceeding £18,000,000, less the discount and cost of floating, and the expense incurred by the State must therefore properly be figured on such net sum. In fact, the largest amount of coffee purchased by the State and on hand at any one time, it appears, was 8,474,623 bags, at a total cost of £17,227,213, based on an average cost, as shown in various transactions, of 7.7 cents per pound.

According to the report of Egydio, the minister of finance, dated September 30, 1910, these loans have already cost the State of Sao Paulo in expenses and charges of various kinds, to use his own language, "difference of types of various loans (discounts), freights, insurances, buying and selling commissions, interest on advances, warehousing charges, collection and remittance fees, and other expenses in connection with State-owned coffee," 156,273,158,$084, or over $50,000,000 gold. In other words, on a gross amount available to the State of less than $90,000,000, the expense has already been over $50,000,000, a sum for expense so out of proportion with the money procured for the use of the State or its purposes that my fixed conviction is that the plan, to have its full real designation, should be called "The valorization of coffee, or the exploitation of a State."

Under the valorization plan purchase of coffee for the account of the government of Sao Paulo was begun August 20, 1906, through several banking and coffee firms, among them Crossman & Sielcken, of New York City, a partnership composed of George W. Crossman and Herman Sielcken. (Vol. 1, p. 75.)

As to the general plan of the loans to be made and the security to be exacted, I am informed by Vice Consul Slechta that Mr. Frank

H. Vanderlip was the active agent, who had prior knowledge and part in the transactions, representing the American bankers.

The laws and decrees under which the purchase and control of coffee by the State of Sao Paulo and the coffee committee was acquired contain the following provisions:

ARTICLE 6. The contracting Governments obligate themselves to create a surtax of 3 francs, subject to increase or reduction, upon each bag of coffee exported from any of the (contracting) States, and also to keep in force the laws which hinder, by a sufficiently high tax, the increasing of the areas planted with coffee in their territories, for a period of two years, which may be prolonged by mutual agreement. (Agreement of Aug. 6, 1906, between States of Rio de Janeiro, Minas Geraes, and Sao Paulo.)

Law No. 1127, of August 25, 1908, contains the following provisions:

ARTICLE 1. Upon the coffee which leaves the State and which exceeds 9,000,000 bags during the current crop year, which began on the 1st July, pp., 9,500,000 bags during the crop year beginning July 1, 1909, and 10,000,000 bags during the following years, an additional tax of 20 per cent ad valorem will be collected in the manner prescribed by the laws in force.

ARTICLE 2. The surtax created by article 29 of law No. 984, of the 29th December, 1905, and which will apply to all the coffee which leaves the State, is hereby increased to 5 francs, or their equivalent in (Brazilian) currency, calculated at the official rate of exchange of the day.

ARTICLE 3. The State Government is authorized to contract a loan immediately, abroad, for a maximum of fifteen million pounds sterling, the product of said loan to be used for the completion of the measures necessary for the defense of coffee, and for the conversion into a consolidated debt of the various temporary credit operations undertaken with the same object in view.

1a. The loan to be contracted will have, in addition to the general guarantees, a special guarantee in the coffee which the State has acquired and still possesses, and in the product of the surtax referred to in the preceding article.

2a. The product of the sales of coffees of the State, which shall take place opportunely, shall be applied to the amortization of the loan contracted by virtue of the present authorization. (Vol. 2, pp. 3–4.)

By decree No. 1661, of September 12, 1908, the President of the State of Sao Paulo published, among other things, the following regulations relating to said tax:

ARTICLE 1. (The same as article 1 of the previous law—of 25th August, 1908, with the following additional paragraph.) The said additional tax of 20 per cent ad valorem shall be collected together with the export duty of 9 per cent imposed by previous laws, and with the tax of 5 francs.

ARTICLE 2. (The same as article 2 of the law of 25th August, 1908, but "upon each bag of 60 kilos that leaves the State.")

ARTICLE 3. The duties to which the present regulations apply shall be collected by the State customs office in Santos upon all coffees presented for shipment, the method of collecting being the same as up to the present. (Vol. 2, p. 5.)

By a special contract executed in London, December 11, 1908, the entire conduct of the valorization scheme for the benefit of the State and the financiers, was intrusted to a committee of seven members, of which Herman Sielcken, of the firm of Crossman & Sielcken, New York City, who had originally represented the National City Bank as its authorized agent in the negotiations for the three million pounds loan of 1906, was and is yet the American member.

Among the duties of the committee are those relating to the sale of the valorized coffee, as follows:

Liquidate the stocks of coffee in the name and for account of the Government of S. Paulo, by means of public auctions or sealed proposals, viz: 500,000 bags in 1909–10, 600,000 bags in 1910–11, 700,000 bags in 1912–13, and thereafter 700,000 bags per year.

Beyond these minimum quantities, and at any time before the beginning of the obligatory sales, the committee may furnish to the trade such quantities as it may

require, taking as a basis the price of 47 francs per 50 kilos for good average, and 50 francs for Havre type superior. (Vol. 2, pp. 395–396.)

In the agreement relative to the committee dated London December 11, 1908, made between representatives of all the bankers having to do with the loan and the Government of Sao Paulo, article 2 is as follows:

A. The Government of Sao Paulo now obligates itself to offer for sale, through the committee, at public auctions or by sealed proposals, at the price of the day, preferably during the last six months of the coffee crop, i. e., from January to June 30: 500,000 bags in 1909–10, 600,000 bags in 1910–11, 700,000 bags in 1912–13, etc., and 700,000 bags each following year.

B. In consequence the Government expressly concedes to the committee full and irrevocable power to determine the times of sale, the minimum obligatory quantities above mentioned, the markets in which to sell, and to make the sales in the name of the Government, exercise control over the transactions, and generally to do what is required.

C. Beyond and within the minimum quantities fixed by these figures, and at any time before the beginning of the obligatory sales, the trade may always have at its disposal the quantities which it requires at a price not lower than 47 francs per 50 kilos for good average and 50 francs for Havre type superior. The additional quantity may equal in each year the minimum obligatory quantity.

D. Should this quantity not be sufficient for the needs of the trade, the committee shall also stipulate, in agreement with the Government, the price to be asked for the additional quantity.

E. In case that, through the effect of the preceding clause, the sales should exceed the quantities annually provided for, the committee may postpone the later minimum sales if the state of the market and the statistical situation appear to warrant such delay, but only to the extent of the sales actually made in anticipation.

F. All the sales shall be made by the committee in the name of the Government of Sao Paulo, under the rules for public auctions or sealed proposals; the notes of advice shall be sent to the committee, but for the State of Sao Paulo. (Vol. 2, pp. 399–400.)

Articles 10 and 11 thereof are as follows:

ARTICLE 10. The Government having decreed a law imposing an additional tax of 20 per cent upon all coffees exported from the State of Sao Paulo in excess of 9,000,000 bags during the year June 30, 1908–9, in excess of 9,500,000 bags during the year ending June 30, 1910, and in excess of 10,000,000 bags during any year after July 1, 1910, it hereby obligates itself not to revoke nor to modify this law as long as the said bonds are in circulation and not redeemed.

ARTICLE 11. In addition to this the Government obligates itself to decree any new law that may become necessary to guarantee that the limitation of exports will be strictly observed. (Vol. 2, p. 402.)

Under such restrictive agreements and legislative measures, enacted by the "exigency of the bankers," did the committee members accept trusteeship or agency, and actively work to carry out the intended enhancement of price of that important item of import, coffee, and accomplish thereby under such agreements the resulting restraint of trade therein, into and among the several States of the United States, in violation both of the Sherman Antitrust Act and of section 73 of the Wilson bill.

In plain English, this whole thing looks like a plan devised in the apparent interest of Sao Paulo and Brazil, but, in fact, carried out to the great glory and financial profit of Baron Schroeder, the National City Bank, and their subsequently allied banks, and accomplished through the probably honest, patriotic motives and sense of Sao Paulo's financial minister, Egydio Aranha, who, in his official reports, sets out enthusiastically how it all happened, and how they were able to pay loan after loan by making new loans, each one larger and each negotiated at a greater disadvantage, discount, and loss to the State, and, consequently, a resulting new and bigger profit to the eminent international financiers and their coffee-trade friends.

Under this much vaunted scheme of finance, whereby the most ready cash or credit that was available to the borrowing State was not over $80,000,000 at any one time, and against which expense charges of all kinds in the aggregate of over $50,000,000 have already been collected in the way of taxes, etc., and paid out, there was still outstanding and unpaid about $64,000,000 on last January 1, according to the official reports. I can not see the great cause for rejoicing or for hailing the master mind who conceived this expensive plan as the great patriot of Sao Paulo. I can see reasons for it from the standpoint of the financiers and the committee members who now seem to be juggling the supply to suit themselves and to enhance their fortunes.

If there might be those who would conjure up any halos for those members of the committee, let me cite them to the action of the committee as officially reported by themselves of their meeting of April 27, 1909, wherein "the committee, after careful consideration of all interests, is of opinion that the proposed change of the law is desirable," which proposed the "replacement of the existing law limiting the export of coffee by a new law creating an extra duty of 10 per cent on all exports of coffee, payable in kind, such coffee to be destroyed under the control of the committee," and which went so far as to consider whether said coffee should be burned or carried out on shipboard and dropped into the sea.

Speculation as to whether, without valorization, the jobbing price of coffee would now be higher, as some opine, is purposeless to this inquiry, because without valorization and attendant restrictions upon the areas of cultivation, the conditions as to supply can not now be known, but the normal guess would be that the supply would now be ample; that is, that the increase in acreage of cultivation would have kept pace with the increase in consumption in coffee as it does in most matters, instead of having ceased at reaching the limit under trees recently planted and their better cultivation, as reported. And it is not sound argument on that side to say that valorization saved the planters from ruin and the plantations from going into the hands of the bankers. It is but common experience that what goes into the hands of bankers is only under their greater keenness to have their property and plantations well and fully cared for and cultivated.

Likewise, other planters would naturally have been diverted to the development of new plantations. We, however, have only to deal with the situation as it is, with the crop area restricted, the utmost limit of production thereon reached, and the consumption steadily increasing. Already have we this year reached a situation where the world's production is considerably less than its consumption; and where the visible supply of coffee on June 8 of the present year was only 11,885,000 bags, as against a visible supply on December 1, 1909, of 17,555,000 bags. Thus, at this moment, the surplus from the big 1906–7 crop has already been absorbed, and the visible supply is back to the average before that, when the consumption was much smaller than now, and when the trade proper owned all of the coffee, whereas now the so-called valorization committee, representing the international banking interests, holds surely 5,100,000 bags, and probably more nearly 6,000,000 bags, in its control, and the trade proper has only the remaining 6,000,000 bags. In other words, approximately half of the world's small visible supply is now in the

control of the valorization committee, composed of the strongest and most powerful coffee men and their allies and the financiers back of them. The mere suggestion of this fact must make it apparent how thoroughly at the mercy of this valorization committee is the price of our coffee. Add to this condition the fact that valorization has still more than seven years to run, with continual increase of consumption and no prospect for any large increase in production—at least within seven years, as it takes six full years for new trees, if any were planted immediately, to bear any substantial amount of coffee—and the danger and iniquity of the situation and the power of the valorization committee appalls.

I have said that instead of the valorization committee controlling 5,100,000 bags, which is the official showing to-day, they probably control nearer 6,000,000 bags. I base that conclusion on the following state of facts: Crossman & Sielcken, of New York City, the American agents of the valorization committee, and even the Brazilian Government, in answer to a direct official inquiry properly made, positively refuse to say to whom the April, 1911, sales of valorized coffee were made. The trade, up to the present time, can discover no evidence that any substantial amount of it has been withdrawn from the New York Dock Co.'s warehouses, or other warehouses, for consumption. Outside of a few small lots to interior roasters and jobbers, there is no information available, or even circumstantial evidence, that any of this coffee has really gone out of their hands. Moreover, there has come to light recently what the trade knows as a "restrictive contract," namely, a contract used by these valorization agents in selling coffee which forbids the coffee purchased to be used in filling contracts on the coffee exchange. This is rather a subtle scheme, particularly inasmuch as these restrictive sales are made at a fraction under the exchange prices. At first blush it would appear, therefore, that this was entirely legitimate and even a process beneficial to the general consuming public. However, when we recall that the present price is partially an artificial one, based on the holding up and holding back by these same people of one-half of the world's visible supply of coffee, it will be seen that it amounts to nothing more than fractional underselling in small quantities under their own artificially enhanced and created price, with the very purpose of not breaking that artificial price.

The members of the committee, and the financiers for whom they are agents, are certainly day by day and year by year restraining trade in coffee by holding out these 6,000,000 bags. Moreover, the very essence of this plan, in which they engaged and are engaging was to valorize or cause an artificial, or fixed, or made price on coffee, higher than the natural or ordinary open-market price.

Again, the committee and those in control of the coffee are not even true to their trust so far as the State of Sao Paulo is concerned, because their minister of finance cabled the Brazilian ambassador here, at the time of the attempt to place a proposed import duty on coffee by Congress in 1909, to the effect that all of the coffee could be sold when it had reached the price of 47 francs per bag of 50 kilos, or the equivalent 56.4 francs per bag of 60 kilos. Instead of that, they are now holding the coffee at a price far above that, the last sales, in April, having been made at about 73 to 75 francs per bag of 60 kilos.

The only good points, from the standpoint of the American public, in the plan are possibly the two following:

(1) It has steadied the market and prevented useless, reckless speculation. Whether the steadying and fixing of the market is a good thing is a question. The theory is, in this country, that the market should be open and unsteady, and inviting to free and open competition; so this may be a questionable benfit after all.

(2) It has probably improved the average quality of coffee, in that the restriction on planting made them cultivate more carefully.

The net results of the valorization appear to be:

(1) Large profits to the financiers.

(2) Some net profit to the planters.

(3) None to the State; rather a loss because of the amount of revenue, the collection of which is called for and diverted, and, while the State's coffee is going up in price, yet it is probable that the interest, storage, and commission charges will eat that up before the end of the valorization scheme, January 1, 1919.

(4) The addition and piling of all of these costs and advances on the coffee consumers.

(5) The restraint in trade caused by the carrying out of the plan.

(6) The enhancement of the price of the great article of common use imported chiefly from Brazil—coffee.

There has been substantial restraint, and attempts to enhance, and enhancement of the price in this matter by the following:

(1) The curtailment of production by stopping the additional planting and cultivation to keep pace with an increasing demand. This situation still exists.

(2) By systematically engaging in a campaign at big expense to make an increased demand in the face of a restricted production.

(3) By restraining exportation from Brazil under a heavy export tax, levied on the "exigency" or demands of the bankers who made the loan that made the scheme possible.

(4) By restraining exportation from Brazil by a levy of extra tax on all exports over a given quantity.

(5) By holding the valorization coffee out of the open market.

(6) By holding coffee even when way above the declared Government maximum price to be demanded of 47 francs per 50 kilo, or 56.4 francs per 60-kilo bag. The last sales were at 73 francs and 75 francs per 60 kilos.

And each of these things have been deliberately and designedly done, according to the official reports, with the one actuating motive and intent present from the very origin of the idea, namely, to increase the price of an article which some one or more of them were engaged in importing, to wit, coffee, in direct conflict with and in violation of the statutes of the United States, to wit, section 73 of the Wilson Act, elsewhere quoted—and this the law in the Nation which takes 80 to 85 per cent of their entire product, which they well knew, or should have known.

This purpose and these facts and this law the bankers well knew or should have known when they demanded certain restraints to make the intended result of increased price more certain.

In this declared purpose the bankers and their agents aided and abetted and participated when they took the bonds and made the

loans to carry out this purpose to increase the price of this commodity of such common use in the United States that the people of the United States absorb 40 per cent of the entire world's supply.

In this violation of the law certain brokers joined in taking and holding certain portions of the stock of this coffee, for the purpose of assisting in the consummation of this plan to increase the price of an article in which they were engaged in importing.

Of a violation of this law the members of the so-called valorization committee, who are among the best-posted coffee men in the world, were and are guilty, but of them we can deal only with the American member, Mr. Herman Sielcken, who is now and has been since before this investigation was begun living out of the United States, to wit, on his estates in Baden-Baden.

When this investigation had developed far enough to find that one American citizen was a member of this committee, and had been since its organization, the question presented itself as to how he could be reached so as to stop his activities, and through him those of the committee so far as it dealt with the imports to the United States, when he did not appear as a party to the original contract between Sao Paulo and the other States and the bankers. This is not now a problem, because it appears that Mr. Herman Sielcken, of New York, the American member of the committee, appeared and acted for the National City Bank, as its "agent duly authorized in the city of London," representing it "for the purposes of this agreement" at the making of the first "definitive" agreement for the loan of the £3,000,000 on the 14th of December, 1906, and personally signed the said definitive agreement as the representative of said bank, and his firm also actively bought valorized coffee for Sao Paulo. We have him therefore present as the active tort feasor at the outset of the plan, and he can not escape the penalty of his act and subsequent acts in the plan by saying he committed the misdemeanor as the agent of another.

But he is more than agent, if that were necessary, which I believe it is not. He is the trustee, who has accepted the trusteeship in this country of the illegal plan and agreement and its subsequent or resulting bonding scheme, and all the demands for security made in the way of restricted exports and planting and cultivation with its resulting restraint upon imports into the United States and the consequent enhancement of prices upon such imports. He is the illegitimate trustee of the operations in this country of the illegal agreement or its results which are violative of section 73 of the act of August 27, 1894, and of which agreement the original contracting parties remain only the cestues qui trustants, while Mr. Sielcken and the other six committee members act, do, carry on, and carry out, a plan in violation both of the act of July 2, 1890, and particularly of section 73 of the act of August 27, 1894, "to increase the price of imports" in which they deal, 80 or 85 per cent of which are to come to this country. Therefore said acts, as criminal statutes can and do reach him in his accepted, adopted, and acting active capacity, as he must stand sponsor for his own torts or misdemeanors. He can not escape by setting up his representative capacity either as agent or as trustee ex malificio. If that were so, what a splendid opening for international criminal schemes through trustees and agents. His acts must stand by themselves as misdemeanors, no matter

who inspired, or in reliance upon or through what contract they were brought into being. Were it otherwise, a criminal would always plead representative capacity, "Let me off and take my principals." Criminal law answers: "We will take and punish both principal and agent." Criminal laws are for deterrents as well as punishments. To take both principal and agent is the greater deterrent.

Section 76 of the act of August 27, 1894, provides—

> That any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section 73 of this act, and being in the course of transportation from one State to another, * * * shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

This is identical with section 6 of the Sherman Act. I have always wondered why section 6 has been invoked so little. It is my belief that when that act was framed, section 6 was designed to be the real effective deterrent, particularly to continuing violations. Moreover, its employment makes the Government's actions at the expense of the offenders, as they should be, and not a tax upon the people.

In this case I would recommend that, as a part of the proceedings, instructions be given to institute seizure and condemnation proceedings on the first valorization coffee to move in interstate commerce. I do not believe it would require but one such seizure to enable the Government to make terms as to the future handling and disposition of valorization coffee. It may be urged that such a proceeding might make international complications. I have thought of that. Suppose the situation was reversed and it was a commodity, a mere commercial trade commodity, of the United States that was being moved intraterritorially in some foreign country, in violation of its plain statutes. Is there any doubt what the upshot would be? I conceive not. The property would be seized at once. And what is more, the respect for the laws of other nations, particularly intraterritorially, which the comity of nations demands be observed, would leave the injured nation without either legal, equitable, or even moral grounds of complaint. I believe that I can safely make that assertion, even though I am not versed in international law.

Moreover, the Government of Sao Paulo, through the Brazilian Government, has officially disclaimed further interest in the valorization operations. In an official message to the secretary of the Brazilian embassy at Washington, sent for the purpose of influencing the official actions of the Congress of the United States, and sent through the Brazilian Government's official channels, the minister of finance of Sao Paulo, under date of April 1, 1909, said:

> The Government of Sao Paulo is no longer engaged in any valorization operations and has ceased entirely with its intervention in the market with the signing of the 15,000,000 pounds sterling loan. All the coffee stock belonging to the State has been delivered to the committee of bankers authorized to sell it. The committee is obliged to sell, in accordance with the contract, at the market price and to the amount of 500,000 bags during the year 1909–10, 600,000 bags during the year 1910–11, and 700,000 bags during the year 1912–13, and an equal amount in the following years. The committee can, however, sell all or any coffee as soon as the price will reach 47 francs per 50 kilos of good average.
>
> There is therefore no action of this Government to advance the price of coffee, as its whole stock can be sold within a few years at the market price. On the contrary, it limits the rise of the market to the maximum price of 47 francs (equivalent to 56.4 francs per ordinary bag of 60 kilos), by which all stock can be sold at once, that price being hardly sufficient to cover the cost of production in the finest coffee zones of this State.

And then, in order that there might be no question at all as to the State's disinterestedness, he proceeds with his disclaimer by putting the burden of causing the export duty to be levied by his State on coffee upon the bankers who financed the scheme, as follows:

> The taxes collected by this State were given in guaranty of the loan and will be reduced, once the loan is redeemed. The tax of 20 per cent ad valorem on the export beyond the amount marked by law (9,000,000, 9,500,000, and 10,000,000 bags for 1908–9. 1909–10, and 1910–11, respectively) was created by exigency of the bankers, but the Government is negotiating with them to replace it by another more acceptable to the markets.

Under such circumstances would it not be an act of international kindness for the United States to help Sao Paulo to remove this millstone of surtax, export tax, and added ad valorem export tax? And particularly when this same minister of finance adopts as his own this language:

> To suppress coffee exports is to profoundly injure the whole of Brazil, threatening its very existence. (Report of Sept. 30, 1910.)

Their acts thus disowned as the acts of agents of the Government, the committee and the financiers must face alone the onus of holding the valorization coffee out of the market while it has gone up 6 cents per pound, and while it has gone far above the 47 or 56.4 francs per bag, which the minister of the Government who has had the matter in charge says is the top limit of price desired by the Government for its product. They must stand as having deliberately and willfully conspired to enhance the price of this import and to restrain the trade in coffee by so doing. I can see neither justification, excuse, nor escape for them. Under the terms of their trusteeship contract, if they only sold the minimum amount of coffee per year there would still be one and one-half million bags on hand, the last six months of the term for which the last big loan runs. This is a clear indication that they were expected to sell additional amounts as soon as the price reached the desired level and tends to corroborate the minister's message in that respect. It is true that they have, during the current year, apparently sold an extra 600,000 bags above the minimum, but so far as the market and trade in the United States are concerned not only the extra but also the obligatory sales might as well not have been made. The sales have all been made in secret, and practically none has been withdrawn for consumption, indicating as strongly as circumstances can that the pretended sales are not sales at all bona fides, but a mere bidding in of the coffee by the coffee committee, coffee people and their friends, to hold for a still higher squeeze. And what a good time it was to have so bid it in. The crop just marketed was millions of sacks short of the world's consumption for the year, and though the prospects are for a good crop, to cap it all, for some reason, either through error or otherwise, there is no obligation on the committee to sell a single pound of valorized coffee the coming year, or until June, 1913, so that instead of having done something for the market and the consumer these people on the inside have simply taken advantage of their position to buy some extra coffee which they can, within their powers, as indicated, by subsequent refusal to sell, boost still higher.

While there has also undoubtedly been substantial violations of the Sherman Act, the remedy thereunder is similar to the remedy under the Wilson Act. It seems to me that the whole plan consti-

tutes a plain and complete offense against the latter statute. I therefore recommend that the proceedings be had primarily under section 73 of the act of August 27, 1894, and also under section 76 of the same act. I firmly believe that only criminal proceedings will bring effective results in this case.

A failure on the part of this department to prosecute this matter to the utmost would rightfully bring down upon it the censure of the people, for whom it constitutes the machinery which must stand between them and such unconscionable, open, high-handed, continuous, and bold violation of law for the express and only purpose, from the very conception and inception of the scheme, of gouging the consuming public of this country to the extent of all the numerous commissions and charges which the scheme involved, to the profit of the high financiers of international operation, plus whatever profit which was to come to this foreign nation and its people, at the expense of the American consuming public, who are the known customers of from 80 to 85 per cent of their entire product. Such a lack of patriotism alone should be considered little short of treasonable conduct, but when it is done in the face of and in violation of plain statutes it deserves and should meet the exact and full penalty which the law provides and prescribes. The fact of the standing of the offending parties is nothing that this department can consider. The law is plain. The intent is plain—there has been but one purpose from the beginning. The results are apparent. The future results, unless checked, will be appalling.

If any steps taken bring on negotiations with the Brazilian States, the persons who are conducting them should under no circumstances forget to have the removal of planting restrictions in mind, as a part of the remedy desired, so that the increase of area may again at least begin to grow with the continuing increase in consumption. Even then the situation on that point will be very bad before the remedy can become effective because of the six-year term required for coffee trees to come into fruition. The urgency of the promptest kind of action is apparent.

Respectfully submitted.

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Special Assistant to the Attorney General.

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